



Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

**Matter of:** Wall Colmonoy Corporation--Entitlement  
to Costs

**File:** B-257183.3

**Date:** November 16, 1994

Jeffrey K. Kominers, Esq., and Jamie Palter Rennert, Esq., Galland, Kharasch, Morse & Garfinkle, for the protester. Gregory H. Petkoff, Esq., Department of the Air Force, for the agency. Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protester is not entitled to award of the costs of filing and pursuing its protests where the agency decided to take corrective action within 6 working days of when the defect warranting corrective action was first alleged.

### DECISION

Wall Colmonoy Corporation requests entitlement to the reimbursement of the costs of pursuing its protests against the award of a contract to Precision Metalcraft, Inc. under request for proposals (RFP) No. F34601-93-R-47498, issued by the Department of the Air Force for the overhaul of heat exchangers for the F-15 aircraft. Wall Colmonoy contends that the agency unduly delayed taking corrective action in response to the protests.

We deny the request.

On April 29, 1994, Wall Colmonoy protested the agency's technical evaluation and source selection. On June 2, the Air Force submitted a comprehensive report on the protest rebutting the protester's allegations. On June 16, Wall Colmonoy submitted comments on the report, which included supplemental bases of protest. One of these was that Precision Metalcraft's best and final offer (BAFO) did not include a properly executed Certificate of Procurement Integrity.

On June 24, the Air Force advised our Office that the agency's review of Precision Metalcraft's BAFO confirmed the protester's supplemental protest allegation concerning the certificate. The Air Force stated that it had failed to conduct meaningful discussions to advise Precision Metalcraft of this defect in its proposal. The agency proposed the corrective action of reopening discussions with all competitive range offerors, requesting and evaluating revised BAFOs, and making a new source selection decision. As this proposed corrective action rendered the protested source selection process academic, the Air Force requested dismissal of the protests.

Wall Colmonoy opposed the agency's proposed corrective action and request for dismissal. Our Office reviewed the protester's opposition and found no basis to object to the proposed corrective action. As explained in our July 19 dismissal of Wall Colmonoy's protest, it is a proper exercise of the agency's discretion to reopen discussions to allow an offeror an opportunity to correct a proposal deficiency which was not identified during discussions. See Henkels & McCoy, Inc., B-250875; et al., Feb. 24, 1993, 93-1 CPD ¶ 174; DPF Inc., B-180292, June 5, 1974, 74-1 CPD ¶ 303. Furthermore, since the proposed corrective action would entail a new evaluation and source selection decision, the protester's other allegations of improprieties in the source selection process were dismissed as academic. See Henkels & McCoy, Inc., supra.

Wall Colmonoy asserts that it is now entitled to reimbursement of its costs incurred in pursuing the protests because the agency allegedly delayed taking corrective action on its protests since the agency did not propose corrective action until June 24, nearly 2 months after the initial protest was filed. We disagree.

Where the contracting agency takes corrective action in response to a protest, our Office may declare the protester entitled to recover the reasonable costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.6(e) (1994). The award of costs is not intended as a reward to prevailing protesters, or as a penalty to the agency, but rather to compel agencies to take prompt action to correct apparent defects in competitive procurements. Agency for Int'l Dev.; Development Alternatives, Inc.--Recon., B-251902.4; B-251902.5, Mar. 17, 1994, 94-1 CPD ¶ 201. Thus, where corrective action is taken in response to a protest, we will declare a protester entitled to costs only where the agency unduly delays taking corrective action in the face of a clearly meritorious protest. Oklahoma Indian Corp.--Claim for Costs, 70 Comp. Gen. 558 (1991), 91-1 CPD ¶ 558.

Here, the Air Force's decision to take corrective action was not unduly delayed. Wall Colmonoy's initial protest did not contain any allegations which would have alerted the agency to the deficiency in Precision Metalcraft's BAFO attributable to the unexecuted Certificate of Procurement Integrity, and thus the promptness of the agency's decision to take corrective action on that basis should not be measured from the date of the initial protest, but from the date on which the relevant allegation first was made. See Henkels & McCoy, Inc., supra. In this case, Wall Colmonoy first alleged a defect in Precision Metalcraft's Certificate of Procurement Integrity on June 16. The Air Force announced its decision to take corrective action 6 working days later. Thus, the Air Force did not unduly delay taking corrective action.

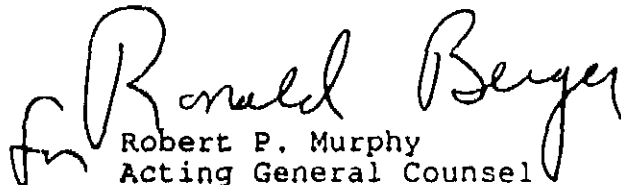
Subsequent to filing this request, Wall Colmonoy informed our Office that the Air Force amended the solicitation to delete delivery as an evaluation factor.<sup>1</sup> Wall Colmonoy alleges that the agency amended the evaluation factors in response to one of Wall Colmonoy's initial protest issues, concerning the evaluation of the awardee's delivery, and thus, Wall Colmonoy is entitled to protest costs because the agency unduly delayed taking corrective action in response to Wall Colmonoy's clearly meritorious initial protest until after defending this protest basis in its report. The Air Force states that it deleted delivery as an evaluation factor only to avoid further delays in the delivery of this critical item due to possible future protests concerning delivery as an evaluation factor, and that it was not corrective action. We have no reason to doubt the agency's explanation and note that the agency only amended the

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<sup>1</sup>Wall Colmonoy states that it was awarded the contract under the amended solicitation. To the extent that Wall Colmonoy now contends that the amendment was improper because it made price the sole basis for award after the initially proposed low price had been exposed, this is an untimely protest basis raised after the time for receipt of revised proposals following issuance of the amendment, and thus will not be considered by our Office. See 4 C.F.R. § 21.2(a)(1).

evaluation factors after we dismissed Wall Colmonoy's protest as academic due to the agency's decision to reopen discussions and request revised proposals.

The request for a declaration of entitlement to costs is denied.

  
Robert P. Murphy  
Acting General Counsel

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<sup>2</sup>Wall Colmonoy's continuing opposition to the agency's reopening of negotiations as an allegedly improper auction is without merit because, as stated in our dismissal, the agency's decision to reopen negotiations was proper. See The Faxon Co., 67 Comp. Gen. 39 (1987), 87-2 CPD ¶ 425.